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April 6, 2007

BY HAND DELIVERY

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, Arizona 85053

Re: RW-00000B-07-0051 - Water Rulemaking
RSW-00000A-07-0051 - Sewer Rulemaking

Dear Mr. Johnson:

On behalf of Red Rock Utilities, LLC, Spanish Trail Water Company, and Saguaro Water Company, I am providing you with the enclosed set of comments on the proposed rule changes relating to Applications for Certificates of Convenience and Necessity (CC&N) and expanding CC&N's for water and wastewater providers.

We appreciate this opportunity to submit comments on the proposed rules and look forward to continuing to work with the Commission and Staff as this rulemaking process continues.

Sincerely,

FENNEMORE CRAIG, P.C.

Shilpa Hunter-Patel

cc: Docket Control

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RED ROCK UTILITIES, LLC, SPANISH TRAIL WATER COMPANY AND SAGUARO WATER COMPANY'S COMMENTS ON PROPOSED CHANGES TO RULES REGARDING APPLICATIONS FOR CC&N'S AND CC&N EXTENSIONS FOR WATER AND WASTEWATER COMPANIES; RW-00000B-07-0051 and RSW-00000A-07-0051

The following comments on the proposed changes to the Arizona Administrative Code (the "Rules") related to applications for new Certificates of Convenience and Necessity ("CC&N") and extensions to CC&N's for water and wastewater utilities are being submitted on behalf of Red Rock Utilities, LLC ("Red Rock"), Spanish Trail Water Company ("Spanish Trail") and Saguaro Water Company ("Saguaro"). We appreciate this opportunity to comment on the proposed rule changes and look forward to continuing to work with the Commission and Staff on the development of these rules.

I. General Comments.

Initially, we note that Red Rock, Spanish Trail, and Saguaro generally support the Commission's efforts to clarify the requirements related to applications for CC&N's and extensions to CC&N's. However, we have some concerns regarding several of the proposed rule changes which we believe address substantive requirements that are currently within the purview of other state-level regulators. In particular, we are concerned with several provisions related to water use characteristics which Arizona Department of Water Resources ("ADWR") regulates under its water conservation and assured water supply requirements, as well as certain infrastructure and construction standards regulated by Arizona Department of Environmental Quality ("ADEQ"). We strongly believe that to the extent that the proposed rule changes refer to regulatory requirements that are already covered by the regulations of other state agencies, the rule changes will result in contradiction and create conflict for water and wastewater companies. We are similarly concerned that the proposed rules on Section 208 Plan approvals for wastewater company CC&N's may result in timing and processing delays. As a regulated community, it is important that we have a clear understanding of the applicable regulatory requirements and that any "overlap" which results in such confusion be avoided. For these reasons, we strongly urge the Commission and Staff to re-evaluate the underlying reasoning behind these specific rule changes. We are confident that upon examination it will be clear that the substantive concerns related to these rule changes, such as the concern for adequate water supplies, will best be served by continued reliance by the Commission and Staff on the responsibilities already appropriately granted to other state agencies with specific expertise in those particular fields of regulation.

Below is a discussion of Red Rock, Spanish Trail, and Saguaros' specific comments to each relevant rule change and the issues presented by the proposed rule language.

II. Specific Comments.

A. Rule changes relating to Water Use Characteristics and Water Conservation—R14-2-402(A)(2)(q) and (r).

We are concerned that the water use information requested under R14-2-402(A)(2)(q) will lead to prohibitions on the otherwise legal use of groundwater to supply the listed uses. We believe that regulation of groundwater use conservation is appropriately addressed by the Arizona Department of Water Resources (ADWR) which has the technical expertise and a full array of regulatory programs in these areas. We are concerned that additional requirements imposed by the Commission will result in conflicting regulations and would like to encourage the Commission to continue to rely on ADWR in these complex areas of regulation.

Initially, we note that the relevant inquiry for issuance of a CC&N is: (1) whether there is a "need and necessity" for the utility service and (2) whether the applicant is "fit and proper" to hold the CC&N. The information on water use in proposed R14-2-402(A)(2)(q) is not relevant to this review and as such the information should be a required part of the CC&N application.

Currently, ADWR regulates groundwater use for new developments in a number of ways. For example, ADWR's Assured Water Supply Program assures that developments inside active management areas (AMA) have sufficient water and that long-term reliance on groundwater supplies is subject to replenishment with renewable supplies—which assures groundwater supplies are available in times of need. Pursuant to A.R.S. § 45-341, water providers are required to submit drought plans to ADWR annually. Also, ADWR has regulations addressing lost and unaccounted for water loss limitations to address issues such as water leaks in streets. Even outside of AMA's, there is new legislation aimed at assuring that subdivisions can be required to demonstrate adequate supplies with ADWR. ADWR also regulates water conservation and has developed several programs to address conservation by water providers, as well as large water users such as turf facilities—including golf courses and open space areas greater than 10 acres. In addition, ADWR also regulates the use of groundwater in lake facilities under A.R.S. § 45-132 which prohibits the establishment of new private lakes that will rely solely on groundwater. These regulations are designed to allow for a "bridging" period so that adequate effluent supplies can be established to meet those needs. Without such a bridge supply, it would be impossible for a new development to support effluent supplies for features like golf courses because without sufficient customer base there would not be enough effluent supplies. In short, we are concerned that a groundwater use prohibition as implied in the proposed rules will result in a land use prohibition that essentially prohibits new developments served by private water companies from offering these amenities to customers.

We are confident that ADWR's has ample ability to regulate both groundwater use and water conservation and believe the Commission can rely on ADWR expertise in these area. We are concerned that water use and conservation requirements will result in conflicting regulations with ADWR which already has authority over these areas. In

addition, due to the vagueness of the terms in the draft rule, we believe that the rules will not add any clarity to the Commission's CC&N requirements, but will result in duplicative regulation with ADWR and a complex disparity in types of new developments served by private water companies from developments served by other providers. For these reasons, we urge the Commission and Staff to reconsider the need for the draft rule as well as the CC&N condition on water use limits, as these types of conditions will substantively affect the legal rights of landowners to develop lands for certain uses.

B. Rule changes on ADWR Assured and Adequate Water Supply requirements—R14-2-402(A)(2)(u).

We object to the assured water supply related list of ADWR approvals under this rule. We note that the majority of approvals listed are not approvals that ADWR issues to water providers, rather they are only available to landowners. As such, although it may be appropriate for a water provider applicant to inform the Commission of the status of the landowner's assured or adequate water supply demonstrations at ADWR, we do not believe such approvals should be a pre-condition to obtaining the CC&N (or extension) for the provider. One of the indirect consequences of the proposed draft language is that it disfavors private water providers from obtaining designations of assured/adequate water supplies—a determination we understand ADWR often supports as designations result in all the supplies/customers of the provider being monitored and reviewed by ADWR annually. Under ADWR's AWS Program, of the applications listed in the proposed R14-2-402(A)(2)(u) only the Physical Availability Demonstration (PAD) is available for water providers. However, this determination only shows that groundwater supplies exist, it does not legally allocate those supplies to the provider. A PAD does not in fact assure that the water is available to be served by the applicant. This means a competing water provider could use the PAD for its own purposes, potentially placing private water companies who invested in the approval at a disadvantage when supplies are limited. To assure that the supply is available to the provider independent of the landowner's AWS applications, the provider must obtain a designation of assured or adequate supplies. However, if the Commission were to require designations, the result is a "chicken-and-egg" regulatory quagmire, because one of ADWR's legal requirements for issuance of a designation is obtaining a CC&N approval from the Commission.

For this reason, we support an approach that maintains the Commission's current practice of conditioning CC&N orders on obtaining the ADWR AWS approval, but does not require such determinations before applying for the CC&N or extension. This would allow private water companies to continue to utilize the more comprehensive and regulatory efficient designation process at ADWR when appropriate. AWS determinations are within the purview of ADWR, and we urge the Commission to rely on the AWS standards already in place. We believe it is sufficient for applicant to inform the Commission of the status of the ADWR approvals and for the Commission to continue its practice of conditioning the CC&N order as appropriate.

C. **Proposed rules on Section 208 Plan Approvals and Effluent Use for Wastewater CC&N's—R14-2-602(A)(2)(d) and (r).**

Red Rock is concerned that the proposed rule on submitted Section 208 Plans approvals or approved amendments will cause processing delays for applicants. We often seek such approvals concurrently with the application for a CC&N. We support the Commission's current practice of granting CC&N's which are conditioned upon completion of the Section 208 Plan approval process. We believe that this practice has adequately allowed applicants the flexibility to complete the CC&N process at the Commission without delay and at the same time addressed this substantive requirement. We suggest that proposed R14-2-602(A)(2)(d) be amended to require applicants to only submit the status of the plan approval or amendment.

In addition, we are concerned that proposed rule R14-2-602(A)(2)(r)regarding information on how effluent will be used for wastewater CC&N applications will impact the ability of utilities to evaluate effluent disposal effectively. For wastewater utilities, a primary concern when considering providing new service is the identification of the most suitable method of effluent disposal. In our experience, selection of the best disposal method depends greatly upon many specific factors. For example, the location of service, available sites and methods for reuse, conditions of the aquifer at specific locations, feasibility of recharge, proximity to any surface waters, and costs concerns for the various methods are all critical factors in determining how effluent disposal should be handled. In addition, for some options, there may be also be safety concerns that are associated with an potential alternative. For example, for effluent delivery via "purple pipes" to residential homes, particularly if the possibility of exposure to children is likely, this safety risk may be an important factor to be considered by the utility. We believe the selection of the best method of effluent disposal to deploy after carefully weighing all of options and relevant factors is best left to the utility and those agencies responsible for the effluent permitting process – i.e., ADEQ. Although we agree that after the decision regarding effluent delivery/disposal is reached, it is appropriate for the Commission to oversee the terms and condition of that service, including setting applicable rates. However, we urge the Commission to rely on the experience of the utility and the effluent permitting agencies in making the appropriate selection of the disposal method to be used.

D. **Rules regarding Water and Wastewater Facility Construction Standards in place at ADEQ—R14-2-402(A)(2)(c) and R14-2-602(A)(2)(c).**

Red Rock, Spanish Trail, and Saguaro oppose these provisions. The proposed rules require very specific engineering reports, which often are not available at the early stage of planning and making an initial application to serve a new area. It would be unduly costly and a waste of resources to engage in the planning of construction details for infrastructure and facilities before the ability to legally serve has been determined. In addition, as the draft rule language states, ADEQ already has regulatory authority over the adequacy of engineering and construction designs, as well

as the professional expertise to review the reports and assure that all necessary facilities are constructed to specified standards. Furthermore, both proposed R14-2-402(A)(2)(c) and R4-2-602(A)(2)(c) suggest that there is a separate standard—independent from the ADEQ construction standards—i.e., the "requirements of the Commission" which applicants must meet. However, the rule does not state what those other "requirements" are in relation to construction standards for facilities. We are concerned that such an undefined requirement will lead to continuously changing standards and requests for additional submittals in the application process. We believe that the Commission should follow its past practice and rely on the approval of ADEQ in such matters, or, at a minimum, expressly define in the rules the standards for the Commission's approval of engineering reports.

E. Comments on proposed rules regarding requests for service and noticing provisions under R14-2-402(A)(2)(i), R14-2-402(A)(2)(k), R14-2-402(A)(2)(l) and R14-2-402(A)(2)(m) for water CC&N's and R14-2-602(A)(2)(j), R14-2-602(A)(2)(l), R14-2-602(A)(2)(m), and R14-2-602(A)(2)(n) for wastewater CC&N's.

Red Rock, Spanish Trail, and Saguaro oppose the above referenced rule language inasmuch as the rules imply that requests for service for all lands in the CC&N application area will become a requirement to obtain the CC&N or CC&N extension. Although we support a reasonable noticing requirement for landowners in the application area and submission of any requests obtained by the applicant, we are concerned that, as a water or wastewater service provider, we will no longer have the flexibility to plan regionally for utility services if we are required to obtain requests for service for all of the landowners in the area. The result may be a piecemeal or patchwork of utilities that do not have the ability to benefit from economies of scale for customers in the region. We recommend that the rules be modified to indicate that applicants are required to submit "any" requests for service obtained for the application area.

As to the noticing provisions, Red Rock, Spanish Trail, and Saguaro believe the rules should clearly indicate the reasonable efforts applicants must undertake to notify landowners of the CC&N application. For example, proposed rules R14-2-402(A)(2)(m) and R14-2-602(A)(2)(n) state that "the application shall include a description of the action taken by the applicant to obtain a written response from the land owner" when a response is received. It is unclear what is expected in this circumstance from the applicant. What "action" is expected when no response is received to the notice? We suggest that the rules be amended to clearly indicate that applicants should submit information related to attempts to notify land owners and the responses, if any, received. Once the applicant has completed these steps there should be no needed for any further "action" by the applicant.

F. Comments on additional supporting documentation for applications—R14-2-402(A)(2) and R14-2-602(A)(2).

1. Comments on proposed rules regarding additional information for water CC&N's:

R14-2-402(A)(2)(c) Facility Engineering Reports	Engineering reports should remain domain of ADEQ approval, rules should require compliance with ADEQ requirements at appropriate time, not specific engineering reports before CC&N is issued. See detailed comment above.
R14-2-402(A)(2)(d) and (e) Cost estimates and Financial Condition	What is the level of detail intended? Please confirm that the submission of debt/equity analysis for financial requirements will remain acceptable.
R14-2-402(A)(2)(g) Operating Revenues	Please confirm that 5 year projections of revenues and expenses will be sufficient demonstration for this rule.
R14-2-402(A)(2)(i) Requests for Service	Spanish Trail and Saguaro oppose a requirement that all landowners must request service for issuance of a CC&N or CC&N extension. There are sound water management and regional concerns that may require utility planning to include particular areas in a CC&N. We believe that the Commission should continue to consider these factors when evaluating applications. See detailed comment above.
R14-2-402(A)(2)(j)(iii) Owner of parcels within service area	Spanish Trail and Saguaro oppose this rule, please see detailed comment above.
R14-2-402(A)(2)(j)(iv) City/Town corporate limits within 1 mile	Spanish Trail and Saguaro oppose this requirement. What is the relevance to the Commission's review of the proximity of a city or town's boundary when the application area is located "outside" of the corporate limits? Spanish Trail and Saguaro believe that the relevant inquiry is confirmation that the area to be served is outside of a city or town. The rule should be revised to simply request such confirmation.

R14-2-402(A)(2)(j)(v) Service area of public service corporation within 1 mile	What is the relevance of this information? If any such entities do not have an existing service right to cover the land within the application area, proximity to the requested area should not be part of the substantive criteria reviewed by the Commission. This information should not be part of the application.
R14-2-402(A)(2)(j)(vi) Existing service area connections within service area	How will applicants obtain this type of information if it is not known. We suggest the rule be revised to clarify that such information be submitted only if available and known to the applicant.
R14-2-402(A)(2)(j)(vii) Locations of Developments within service area	For efficiency, we suggest that this information be combined with the map requirement (i.e. map identifies the developments to be served) under R14-2-402(A)(2)(i) and deleted here.
R14-2-402(A)(2)(j)(viii) Location of Facilities	For efficiency, we suggest that facility location can be provided along with general description of the construction facilities/engineering report under R14-2-402(A)(2) and deleted here.
R14-2-402(A)(2)(j)(ix) Location of Parcels with Requests for Service	For efficiency, we recommend that this information be combined with request for service information under R14-2-402(A)(2)(i).
R14-2-402(A)(2)(k); R14-2-402(A)(2)(l); and R14-2-402(A)(2)(m) Landowner Noticing	Spanish Trail and Saguaro believe that the rules should clearly indicate the "actions" applicants must take to notify landowners in the application area, however there should not be a requirement that all landowners request service in the area. See detailed comment above.
R14-2-402(A)(2)(p) Name of wastewater provider	Red Rock, Spanish Trail, and Saguaro strongly oppose any requirement that integration of water and waste water service is necessary. We believe that this decision depends greatly on the available services and needs of a particular area. In some cases, it may be much more favorable for one company to provide water service and for another to provide wastewater services. We believe that the Commission should continue to allow for this type of flexibility in services. See detailed comments above.

R14-2-402(A)(2)(q) Water uses like golf courses, lakes, water features, greenbelts, parks	Red Rock, Spanish Trail, and Saguaro strongly object to this requirement. See detailed comments above. We believe that in reality this requirement is intended to regulate land uses and development rights and is not in fact related to the Commission's regulation of water companies. Statewide regulations are already in place to address water conservation and groundwater use. We urge the Commission to rely on ADWR and not seek to regulate the rights of landowners to develop lands for particular uses.
R14-2-402(A)(2)(r) Water Conservation	Spanish Trail and Saguaro strongly object to this requirement. See detailed comments above. We believe that the conservation program in place at ADWR is adequate and the Commission should not single out private water companies from all other providers for additional layers of conflicting regulation.
R14-2-402(A)(2)(u) ADWR Assured Water Supply Requirements	Spanish Trail and Saguaro strongly object to this requirement and urges the Commission to not foreclose private water companies from seeking designation of assured water supply from ADWR when appropriate. See detailed comments above.
R14-2-402(A)(2)(v) ADEQ Compliance Report	We believe that this requirement should only apply for existing CC&N's where water service has been initiated (not extension to CC&Ns where service has not begun). Also, in practice we suggest that 90 days is an appropriate time frame as we note that on occasion it can take some time to obtain the reports for ADEQ.

2. Comments on proposed rules regarding additional information for wastewater CC&N's:

R14-2-602(A)(2)(c) Facility Engineering Reports	Engineering reports should remain the domain of ADEQ approval, the rules should require compliance with ADEQ requirements at appropriate time, not specific engineering reports before CC&N is issued. See detailed comment above.
R14-2-602(A)(2)(d) CWA Section 208 Plan	The current practice is for CC&N's (and CC&N extensions) to be conditioned on Section 208 Plan approvals that often follow later. Red Rock believes this practice has appropriately allowed applicants flexibility in timing the approval of both the CC&N and Section 208 Plans. We believe it is appropriate for applicants to submit information on the status of the Section 208 approval, however, it would cause confusion in the concurrent Section 208 process to require completion of that approval before applications for CC&N are made to the Commission. Red Rock objects to the proposed rule language requiring submission of approved Section 208 Plans at the time of application. See detailed comment above. Note: the rule language suggests that 208 Plans and amendments are "issued" by ADEQ, we note this is not reflective of the actual Section 208 approval process.
R14-2-602(A)(2)(e) and (f) Cost estimates and Financial Condition	What is the level of detail intended? Please confirm that submission of debt/equity analysis will remain acceptable to satisfy the financial requirements.
R14-2-602(A)(2)(i) Construction Phasing	Proposed rule indicates that construction phasing shall be described in detail. However, at the time of making a CC&N application, which is rather early, it is often difficult to have all aspects of phasing and construction fully identified. Please clarify how much "detail" will be required.

R14-2-602(A)(2)(j) Requests for Service	Red Rock opposes a requirement that all landowners must request service for issuance of a CC&N or CC&N extension. There are utility planning and regional concerns that may require utilities to include particular areas in the CC&N. We believe that the Commission should continue to consider these factors when evaluating applications. See detailed comment above.
R14-2-602(A)(2)(l); R14-2-602(A)(2)(m); and R14-2-602(A)(2)(n) Landowner Noticing	Red Rock believes that the rules should clearly indicate the "actions" applicants must take to notify landowners in the application area, however there should not be a requirement that all landowners request service in the area. See detailed comment above.
R14-2-602(A)(2)(q) Name of Water Provider	Red Rock, Spanish Trail, and Saguaro strongly oppose any requirement that integration of water and waste water service is necessary. We believe that this decision depends greatly on the available services and needs of a particular area. In some cases, it may be much more favorable for one company to provide water service and for another to provide wastewater services. We believe that the Commission should continue to allow for this type of flexibility in services. See detailed comments above.
R14-2-602(A)(2)(r) Use of Effluent	Red Rock objects to this provision. What is the relevance of this information to providing wastewater services? To the extent that generation and use of effluent are appropriately regulated by ADEQ, and in some cases ADWR. Based on the particular needs of a water system, effluent use can take many different forms. Regulating effluent uses is not related to the Commission's regulation of the wastewater services and rates. Utilities should be allowed to continue to make case-by-case determinations of what is an appropriate method for disposal of effluent in the service area given the individual circumstances of particular system, and the environmental constraints/opportunities associated with the surrounding landscaping land forms.

G. Comments regarding rule provisions related to CC&N extensions—R14-2-402(A) and (C); R14-2-406(A) and (B).

Initially, we note that our review of the draft rules indicates that applicants for an extension or addition that is contiguous to an existing CC&N are only required to submit the information identified in proposed R14-2-402(C) for water CC&N's and R14-2-602(B) for wastewater CC&N's, and are not required to submit the items listed under proposed R14-2-402(A) and R14-2-602(A), respectively. Please confirm our understanding of the proposed new rules.

Second, as a general comment, we recommend that whenever possible the rules should not require CC&N extension applicants to re-submit information related to requirements already established when the original CC&N application was made. For example, the proposed rules require extension applicants to submit evidence of the applicant's financial condition. (*See* proposed R14-2-402(A)(e) and R14-2-602(A)(f).) If there has been no material change in the applicant's financial condition since the original CC&N was granted, an applicant should not have to re-submit essentially the same information for an extension application. Generally, applicants for extensions should not be required to re-submit these types of documents, as holders of prior CC&N grants this information would already be on file with the Commission. Red Rock, Spanish Trail, and Saguaro believe that these types of changes will help streamline the application process.

III. Conclusion.

In general, Red Rock, Spanish Trail, and Saguaro support the Commission's efforts to clarify the rules for issuance of CC&N's and CC&N extensions for water and wastewater companies. However, for the specific reasons outlined above, we believe that several of the proposed rule changes raise issues that will result in confusion and conflict with the regulatory requirements already in place at other state agencies. We believe that water resource, conservation and supply issues are adequately addressed by ADWR, the state agency given regulatory authority for all water providers in these areas. Similarly, we believe that the current practice of conditioning CC&N's on obtaining necessary Section 208 Plan approvals is working and should remain in place. Finally, we urge the Commission to clarify the rules to clearly indicate the noticing requirements for landowners within the application area and indicate that obtaining requests for service from all landowners is not prerequisite to issuance of a CC&N or CC&N extension. Similarly, the rules should make clear that the Commission does not require integration of water and wastewater services. As noted above, we strongly believe it is necessary for water and wastewater companies to retain flexibility on these matters.

Thank you again for the opportunity to comment on the proposed rule changes.